

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

<b>James F. Beil,</b>	)	<b>CASE NO. 1:04 CV 1870</b>
	)	
<b>Plaintiff,</b>	)	<b>JUDGE PATRICIA A. GAUGHAN</b>
	)	
<b>vs.</b>	)	
	)	
<b>Lake Erie Corrections Records Dept.,</b>	)	<b><u>Order</u></b>
<b>et al.</b>	)	
<b>Defendants.</b>	)	

This matter is before the Court upon remand by the Sixth Circuit for the limited purpose of considering plaintiff's Notice of Appeal as a Fed.R.App.P. 4(a)(5) motion for extension of time. For the following reasons, the motion is granted.

On October 18, 2005, this Court issued its Judgment Entry dismissing this case. Plaintiff filed an untimely Notice of Appeal on December 6, 2005. As noted by the Sixth Circuit, however, this document was filed within the time for filing a motion for extension of time to file a notice of appeal. Accordingly, plaintiff must demonstrate excusable neglect or good cause for the untimeliness. Fed.R.App.P. 4(a)(5)(A)(ii).

Plaintiff states in his Notice of Appeal that his appeal is untimely because he was

“waiting to hear” from defense attorney, Mike Smakula, and because of a “back log from medical problem.”

According to the Advisory Committee's note to the 2002 Amendments to this rule:

The excusable neglect standard applies in situations in which there is fault; in such situations, the need for an extension is usually occasioned by something within the control of the movant. The good cause standard applies in situations in which there is no fault--excusable or otherwise. In such situations, the need for an extension is usually occasioned by something that is not within the control of the movant.

In part, plaintiff asserts his medical problem as the basis for his untimeliness. Such is a factor not within plaintiff's control. As such, the Court finds it to be good cause for the late filing.

Accordingly, plaintiff's motion for extension of time is granted.

IT IS SO ORDERED.

/s/ Patricia A. Gaughan  
PATRICIA A. GAUGHAN  
United States District Judge

Dated: 5/3/06